

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	MASSACHUSETTS
Name of Movant	ANDRES MARTINEZ	Prisoner No.	80442-038
		Case No.	04:10299-PBS
Place of Confinement	LOW SECURITY CORRECTIONAL INSTITUTION ALLENWOOD P.O. BOX 1000, WHITE DEER, PA 17887		
UNITED STATES OF AMERICA		V	ANDRES MARTINEZ (name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack
UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS
- Date of judgment of conviction June 16, 2006
- Length of sentence 188 months
- Nature of offense involved (all counts) 21 U.S.C. 846, 841(a)(1)(A) conspiracy to distribute five kilograms or more of cocaine 21 USC 856, maintaining a place for the purpose of drug distribution, Two Counts of distribution of cocaine, One Count under 924(c)(1) One Count of aiding and abetting and a forfeiture Count.

- What was your plea? (Check one)

(a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Petitioner plead guilty to Count One of a Second Superseding Indictment, conspiracy charge, and Count Nine possession with intent to distribute cocaine 21 USC 841(a)(1)

- If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐
 (b) Judge only ☐ N/A

- Did you testify at the trial?

Yes ☐ No ☒

- Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9 If you did appeal, answer the following:

(a) Name of court United States Court of Appeals for the First Circuit.

(b) Result Sentence was affirmed

(c) Date of result March 2, 2007

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11 If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(b) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(2) Result:

(6) Date of result:

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc

Yes ☐ No ☐

(2) Second petition, etc

Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state *briefly* without citing cases or law):

A) Counsel failed to object and review the trial testimony
used, to enhance my drug quantity and role in the offense
before sentence.

B. Ground two:

Supporting FACTS (state *briefly* without citing cases or law):

B) Counsel failed to properly advise me of my opportunity to
seek review of the Court's ruling via writ of certiorari to
the Supreme Court within 90 days.

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law):

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F. Ground four. _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

This issue were not presented previously because ineffective
assistance of counsel should be preserved for collateral attack.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

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(c) On appeal same above

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1st May 2008
Day

Andrés Martínez
Signature of Movant